

**PROJECT NO. 45116**

<b>CHAPTER 22 PROCEDURAL</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>RULES - PHASE II - WATER/SEWER</b>	<b>§</b>	
<b>UTILITIES</b>	<b>§</b>	<b>OF TEXAS</b>

**STAFF STRAWMAN RULE AMENDMENTS TO CHAPTER 22**

Public Utility Commission Staff is drafting proposed rules to further address the application of the Commission's procedural rules to proceedings involving water and sewer utilities. The proposed rules also contain limited modifications to reflect changes to the Commission's procedural practices, the Commission's internal organizational structure, the Texas Administrative Procedure Act, and the Commission's filing technology. A strawman with proposed amendments to the chapter 22 procedural rules has been filed with the Commission's Central Records Division under Project No. 45116 for review by interested parties.

This strawman is offered for public review and comment. The Commission requests comments generally on the costs and benefits of the draft proposed rules. Interested parties are invited to submit written comments on the draft proposed rules that have been filed in Central Records under Project No. 45116 by filing 16 copies of such comments with Central Records no later than **3:00 PM** on **April 18, 2016**. Interested parties are invited to file reply comments by filing 16 copies of such responses with Central Records no later than **3:00 PM** on **April 25, 2016**. All comments should reference Project No. 45116 and should be limited to 20 pages.

Questions concerning this project or this notice should be referred to Kennedy Meier, Legal Division, at [Kennedy.Meier@puc.texas.gov](mailto:Kennedy.Meier@puc.texas.gov) or (512) 936-7265. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1.

1   **§22.2. Definitions.**

2  
3           The following terms, when used in this chapter, shall have the following meanings, unless  
4 the context or specific language of a section clearly indicates otherwise:  
5

6           (1)-(3) (No change.)

7           (4) **Affected person** — For a matter involving an entity that provides electric or  
8 telecommunications service, the ~~The~~ definition of affected person is that definition  
9 given in PURA the Public Utility Regulatory Act, §11.003(1). For a matter involving  
10 an entity that provides water or sewer service, the definition of affected person is that  
11 definition given in TWC §13.002(1).

12           (5)-(26) (No change.)

13           (27) **Major rate proceeding** — Any proceeding filed pursuant to PURA, §§36.101 -  
14 36.111, 36.201-36.203 and 36.205 or §§51.009, 53.101 - 53.113, 53.201 and 53.202  
15 involving an increase in rates which would increase the aggregate revenues of the  
16 applicant more than the greater of \$100,000 or 2.5%. In addition, a major rate  
17 proceeding is any rate proceeding initiated pursuant to PURA, §§36.151 - 36.156 or  
18 §53.151 and §53.152 in which the respondent utility is directed to file a rate filing  
19 package. For water and sewer utilities, a rate filing package filed under TWC §13.187  
20 is a major rate proceeding.

21           (28)-(38) (No change.)

22           (39) **PWS** – Public Water System.

23           (40)(39) **Relative** — An individual (or spouse of an individual) who is related to the  
24 individual in issue (or the spouse of the individual in issue) within the second degree  
25 of consanguinity or relationship according to the civil law system.

26           (41)(40) **Respondent** — A person under the commission's jurisdiction against whom  
27 any complaint or appeal has been filed or who is under formal investigation by the  
28 commission.

29           (42)(41) **Rulemaking** — A proceeding pursuant to APA, Texas Government Code,  
30 Chapter 2001, Subchapter B conducted to adopt, amend, or repeal a commission rule.

31           (43)(42) **SOAH** — The State Office of Administrative Hearings.

32           (44) **TCEQ** – The Texas Commission on Environmental Quality.

33           (45) **TWC** – The Texas Water Code, as it may be amended from time to time.

34           (46)(43) **Unprotested case** — A contested case in which a hearing is not requested  
35 necessary.

36           (47) **WQ** – Water Quality discharge permit.

37           (48)(44) **Working day** — A day on which the commission is open for the conduct  
38 of business.  
39

1    **§22.32.           Administrative Review.**

2    (a)    (No change.)

3    **(b)    TWC applications without notice requirements.** An administrative law judge, without  
4       a hearing or action by the commission, may approve an application filed under the TWC  
5       that does not require a notice or hearing.

6    ~~(c)(b)~~ **Administrative law judge's order.** If an application qualifies for administrative review,  
7       the administrative law judge shall issue an order with proposed findings of fact and  
8       conclusions of law as soon as is reasonably practicable. The order shall be served upon  
9       each commissioner and all parties. Alternatively, an administrative law judge may issue a  
10      proposed order that shall be served on all parties at least 20 days before the commission  
11      is scheduled to consider the application in open meeting.

12   ~~(d)(e)~~ **Finality of order.** At the request of any commissioner, the order shall be placed on the  
13      agenda to be considered in open meeting.; The commission may approve the order of the  
14      administrative law judge, vacate the order of the administrative law judge and remand the  
15      docket for hearing or additional proceedings, or modify the order with the agreement of  
16      the parties. If, within 20 days after issuance of the administrative law judge's order, the  
17      commission has not scheduled the application to be considered in open meeting, the order  
18      is deemed approved and becomes final.

19   ~~(e)(d)~~ **Notice requirements.** Nothing in this section shall be construed to alter any notice  
20      requirement imposed on any proceeding by statute, rule, or order.

21   ~~(f)(e)~~ **Time limits.** Nothing in this section shall be construed to alter any time limit imposed on  
22      any proceeding by a statute, rule, or order.

23   ~~(g)(f)~~ **Exceptions to administrative law judge's order.** Nothing in this section shall be  
24      construed to preclude any party from filing exceptions to the administrative law judge's  
25      order, provided such exceptions are filed with the commission within 15 days after the  
26      issuance of the administrative law judge's order.  
27

1     **§22.33.           Tariff Filings.**

- 2     (a)     **Applicability and classification.** This section shall apply to undocketed applications by  
3             utilities to change their tariffs. Such tariff filings shall be classified as "electric tariff  
4             filings," "regular telephone tariff filings," ~~or~~ "special telephone tariff filings," or "water  
5             or sewer retail public utility filings (other than a municipality, district, or county)."  
6             Electric tariff filings shall be those applications filed pursuant to §25.241 of this title  
7             (relating to Form and Filing of Tariffs). Regular telephone tariff filings shall be those  
8             applications filed pursuant to §26.207 of this title (relating to Form and Filing of Tariffs)  
9             and §26.208 of this title (relating to General Tariff Provisions). Special telephone tariff  
10            filings shall be those applications filed by telecommunications utilities pursuant to  
11            ~~§26.212 of this title (relating to Procedures Applicable to Chapter 58-Electing Incumbent~~  
12            ~~Local Exchange Companies (ILECs)),~~ §26.209 of this title (relating to New and  
13            Experimental Services), §26.211 of this title (relating to Rate-Setting Flexibility for  
14            Services Subject to Significant Competitive Challenges), and §26.210 of this title  
15            (relating to Promotional Rates for Local Exchange Company Services) or PURA,  
16            §§53.251, 53.252, 53.301 - 53.308 or 55.004. Filings made by a water or sewer retail  
17            public utility, other than a municipality, district, or county shall be those applications  
18            filed pursuant to §24.21 of this title (relating to Form and Filing of Tariffs). This section  
19            shall apply unless it is inconsistent with Chapters 24, 25, or 26 of this title, or PURA.
- 20     (b)     **Standards for docketing.** Tariff filings, other than a tariff filing made in compliance  
21             with a rule or final order of the commission, shall be docketed under the following  
22             circumstances:  
23             (1)     if an electric, ~~or~~ regular telephone, or water or sewer utility tariff filing would  
24                    change the revenues received by the utility for an existing service;  
25             (2)     if an electric, ~~or~~ regular telephone, or water or sewer utility tariff filing would allow  
26                    the utility to begin charging for a service previously available but for which there  
27                    was not a separate charge;  
28             (3)     (No change.)  
29             (4)     if an electric, ~~or~~ regular telephone, or water or sewer utility tariff filing would  
30                    increase a customer's bill even though the rate for a particular service is not being  
31                    changed;  
32             (5)-(6) (No change.)
- 33     (c)     **Effective date.** Except for tariffs required to be filed pursuant to a commission rule  
34             specifying the effective date of such tariffs and for tariffs filed in compliance with a final  
35             order of the commission, no electric, ~~or~~ regular telephone, or a Class A or Class B water  
36             or sewer utility tariff filing may take effect prior to 35 days after filing unless approved  
37             by the presiding officer. The requested effective date will be assumed to be 35 days after  
38             filing unless the applicant requests a different date in its application. The presiding  
39             officer may suspend the operation of the electric or regular telephone tariff filing for 150  
40             days beyond the effective date, or, with the agreement of the applicant, to a later date.

1       For Class A water or sewer utilities, the presiding officer may suspend the operation of  
2       the water or sewer tariff filing for 150 days beyond the effective date, or, with the  
3       agreement of the applicant, to a later date. For Class B water or sewer utilities, the  
4       presiding officer may suspend the operation of the water or sewer tariff filing for 265  
5       days beyond the effective date, or with the agreement of the applicant, to a later date. For  
6       Class C water or sewer utilities, the effective date shall be established in the  
7       commission's order and shall be at least 30 days after the notice to ratepayers.

8       (d)-(f) (No change.)  
9

1 **§22.52. Notice in Licensing Proceedings.**

2  
3 (a) **Notice in electric licensing proceedings.** In all electric licensing proceedings except  
4 minor boundary changes, the applicant shall give notice in the following ways:

5 (1) Applicant shall publish notice once of the applicant's intent to secure a certificate  
6 of convenience and necessity in a newspaper having general circulation in the  
7 county or counties where a certificate of convenience and necessity is being  
8 requested, no later than the week after the application is filed with the commission.  
9 This notice shall identify the commission's docket number and the style assigned  
10 to the case by the Central Records Division. In electric transmission line cases, the  
11 applicant shall obtain the docket number and style no earlier than 25 days prior to  
12 making the application by filing a preliminary pleading requesting a docket  
13 assignment. The notice shall identify in general terms the type of facility if  
14 applicable, and the estimated expense associated with the project. The notice shall  
15 describe all routes without designating a preferred route or otherwise suggesting  
16 that a particular route is more or less likely to be selected than one of the other  
17 routes.

18 (A) The notice shall include all the information required by the standard format  
19 established by the commission for published notice in electric licensing  
20 proceedings. The notice shall state the date established for the deadline for  
21 intervention in the proceeding (date 45 days after the date the formal  
22 application was filed with the commission; or date 30 days after the date the  
23 formal application was filed with the commission for an application for  
24 certificate of convenience and necessity filed pursuant to PURA ~~the Public~~  
25 ~~Utility Regulatory Act~~ §39.203(e)) and that a letter requesting intervention  
26 should be received by the commission by that date.

27 (B)-(E)(No change.)

28 (2)-(7) (No change.)

29 (b) (No change.)

1 **§22.71. Filing of Pleadings, Documents, and Other Materials.**

2 (a) **Applicability.** This section applies to all pleadings as defined in §22.2 of this title (relating  
3 to Definitions) and the following documents:

4 (1) (No change.)

5 (2) ~~Applications filed pursuant to the Public Utility Regulatory Act (PURA) or the~~  
6 ~~commission's substantive rules in Chapter 25 and 26 of this title.~~

7 (3)-(5) (No change.)

8 (b) **File with the commission filing clerk.** Except as provided in §22.72 of this title (relating  
9 to Formal Requisites of Pleadings and Documents to be Filed with the Commission), all  
10 ~~All~~ pleadings and documents required to be filed with the commission shall be filed with  
11 the commission filing clerk, and shall state the control number on the heading, if known.

12 (c) **Number of items to be filed.** Unless otherwise provided by this chapter or ordered by the  
13 presiding officer, the number of copies to be filed, including the original, are as follows:

14 (1)-(11) (No change.)

15 (12) reports filed pursuant to PURA, the TWC, the Public Utility Regulatory Act or the  
16 commission's Substantive Rules: four;

17 (13)-(14) (No change.)

18 (d) **Confidential material:**

19 (1) A party providing materials designated as confidential shall deliver them to Central  
20 Records in an enclosed, sealed and labeled envelope ("confidential envelope"). The  
21 confidential envelope shall not include any non-confidential materials unless  
22 directly related to and essential for clarity of the confidential material. Each copy  
23 of confidential material shall be provided in a separate sealed and labeled envelope.  
24 Parties shall notify the Central Records' filing clerk at the time of ~~prior to~~  
25 submission of any documents to be file-stamped whether the submission includes  
26 any confidential material. If the confidential envelope does not meet the  
27 requirements of subparagraph (A)(i) - (vii) of this paragraph, both the envelope and  
28 any document directly related to the confidential material will be immediately  
29 returned to the submitting party without being filed-stamped. If the confidential  
30 envelope meets the requirements of subparagraph (A)(i) - (vii) of this paragraph,  
31 Central Records shall accept it on a provisional basis. ~~The confidential documents~~  
32 ~~manager for the Legal Division shall review the confidential envelope and~~  
33 ~~documents for compliance with subparagraphs (A) - (C) of this paragraph. Any~~  
34 ~~envelope and/or documents that do not meet the requirements of these~~  
35 ~~subparagraphs will be returned to the submitting party by the confidential~~  
36 ~~documents manager.~~ The submitting party shall be required to bring the envelope  
37 and/or materials into compliance with this section and resubmit the envelope and  
38 materials through Central Records. Parties shall resubmit any documents returned  
39 by ~~either the filing clerk or the confidential documents manager~~ no later than 3:00  
40 p.m. the next working day after notification of the deficiency. Any issue regarding

1 timeliness of the filing shall be addressed by the administrative law judge assigned  
2 to the proceeding. No submitting party shall deliver any confidential materials  
3 directly to commission staff. Confidential documents related to settlement  
4 negotiations shall be submitted pursuant to paragraph (4) of this subsection.  
5 Confidential documents submitted for *in camera* review shall be submitted  
6 pursuant to paragraph (5) of this subsection.

7 (A)-(D) (No change.)

8 (2) (No change.)

9 (3) Unless otherwise provided by this chapter or order of the presiding officer, all  
10 confidential material shall be delivered to Central Records. All commission  
11 employees receiving confidential materials through Central Records, or otherwise  
12 handling or routing confidential materials for any purpose, shall sign an agreement  
13 not to open any sealed containers marked pursuant to paragraph (1) of this  
14 subsection. Confidential materials shall not be filed with the commission  
15 electronically unless specific arrangements are made and agreed to by the parties  
16 involved on a case-by-case basis.

17 (A) Materials related to arbitrations. Central Records will maintain one file copy  
18 that is not accessible to the public or commission staff and one copy that  
19 may be viewed by parties who have signed an agreement to abide by the  
20 protective order in the proceeding. ~~route one copy to the commission's~~  
21 ~~Policy Development Division for the appeals file and one copy to the~~  
22 ~~commission's Legal Division. Commission staff who have signed an~~  
23 ~~agreement to abide by the protective order in the proceeding may view the~~  
24 ~~copy of the confidential material maintained by the Legal Division. The~~  
25 ~~party who provides the confidential material must deliver one copy of~~  
26 ~~confidential materials not related to discovery to the commission's~~  
27 ~~arbitrators assigned to the matter.~~

28 (B) Material related to contested cases transferred to SOAH and other docketed  
29 proceedings. Central Records will maintain one file copy that is not  
30 accessible to the public or commission staff and one copy that may be  
31 viewed by parties who have signed an agreement to abide by the protective  
32 order in the proceeding. ~~Central Records will route the additional copy to~~  
33 ~~the commission's Legal Division. Parties Commission staff who have~~  
34 ~~signed an agreement to abide by the protective order in the proceeding may~~  
35 ~~view the copy of the confidential material maintained by the commission's~~  
36 ~~Central Records Legal Division. The party who provides the confidential~~  
37 ~~material will be responsible for delivering one copy of confidential~~  
38 ~~materials not related to discovery to SOAH.~~

39 (C) Request for proposal for goods and/or services. Confidential material  
40 related to a request for proposal for goods and/or services will be delivered  
41 to the commission's Agency General Counsel or the Agency General  
42 Counsel's authorized representative.



1           (D) Notwithstanding subparagraphs (A)-(C) of this paragraph, commission  
2           employees in the Commission Advising and Docket Management Division  
3           and in the commissioners' offices shall sign one confidentiality and non-  
4           disclosure agreement applicable to all proceedings. Employees in the  
5           Commission Advising and Docket Management Division that are assigned  
6           to a matter and employees in the commissioners' offices may view and  
7           check out confidential material for that matter maintained by the Central  
8           Records Division and may disclose such information to other employees in  
9           the Commission Advising and Docket Management Division that are  
10           assigned to the matter and to employees in the commissioners' offices.  
11       (4)-(6) (No change.)

12       (e) **Receipt by the commission.** Pleadings and any other documents shall be deemed filed  
13       when the required number of copies and the electronic copy, if required, in conformance  
14       with §22.72 of this title are presented to the commission filing clerk for filing. Reports that  
15       are exempt from being filed with the commission filing clerk under §22.72 of this title shall  
16       be deemed received when a record containing the data from the report is created in the  
17       system used by the commission to store the report. The commission filing clerk shall accept  
18       pleadings and documents if the person seeking to make the filing is in line by the time the  
19       pleading or document is required to be filed.

20       (f) (No change.)

21       (g) **Office hours of Central Records and the commission filing clerk.**

- 22       (1) —The office hours of Central Records are from 9:00 a.m. to 5:00 p.m., Monday  
23       through Friday, on working days, except on Fridays and open meeting days. On  
24       Fridays, when Central Records will close for all purposes from noon to 1:00 p.m.  
25       (2) —~~With the exception of open meeting days, for the purpose of filing documents, the~~  
26       ~~office hours of the commission filing clerk are from 9:00 a.m. to 5:00 p.m., Monday~~  
27       ~~through Friday, on working days.~~  
28       (3) —On open meeting days, Central Records will open at 8:00 a.m., and the  
29       commissioners and the Commission Advising and Docket Management Policy  
30       Development Division may file items related to the open meeting on behalf of the  
31       commissioners between the hours of 8:00 a.m. and 9:00 a.m. No other filings will  
32       be accepted between the hours of 8:00 a.m. and 9:00 a.m. The commissioners and  
33       the Commission Advising and Docket Management Policy Development Division  
34       shall provide the filing clerk with an extra copy of all documents filed pursuant to  
35       this paragraph for public access.  
36       (4) —~~Central Records will open at 8:00 a.m. on open meeting days. With the exception~~  
37       ~~of paragraph (3) of this subsection, no filings will be accepted between the hours~~  
38       ~~of 8:00 a.m. and 9:00 a.m.~~

- 1 (h) **Filing a copy or facsimile copy in lieu of an original.** Subject to the requirements of  
2 subsection (c) of this section and §22.72 of this title, a copy of an original document or  
3 pleading, ~~including a copy that has been transmitted through a facsimile machine,~~ may be  
4 filed, so long as the party or the attorney filing such copy maintains the original for  
5 inspection by the commission or any party to the proceeding.
- 6 (i)-(j) (No change.)

1   **§22.72.        Formal Requisites of Pleadings and Documents to be Filed with the**  
2                   **Commission.**

- 3   (a)   **Applicability.** This section applies to all pleadings as defined in §22.2 of this title  
4           (relating to Definitions) and the following documents:  
5           (1)    (No change.)  
6           (2)    ~~Applications filed pursuant to the Public Utility Regulatory Act (PURA) or the~~  
7                   ~~commission's substantive rules in Chapter 25 and 26 of this title.~~  
8           (3)    (No change.)  
9           (4)    Reports pursuant to PURA, commission rules or request of the commission,  
10               however, the following reports are exempt from the requirements of subsections  
11               (d), (e), (f), (g), and (i) ~~(e), (d), (e), (f) and (h)~~ of this section:  
12               (A)    (No change.)  
13               (B)    Reports prepared for other agencies and filed as information only with the  
14                   commission. These reports will be accepted by the commission as filed  
15                   with the other agency; ~~and~~  
16               (C)    Reports filed pursuant to §24.73 of this title (relating to Water and Sewer  
17                   Utilities Annual Reports), §25.73(a)(3) of this title (relating to Financial and  
18                   Operating Reports), and §26.73(a)(2) of this title (relating to Financial and  
19                   Operating Reports); and  
20               (D)    Reports that are submitted directly to the commission using the  
21                   commission's website, pursuant to subsection (k) of this section.  
22           (5)    (No change.)
- 23   (b)   **Exemptions.** The following are also exempt from the requirements of subsections (d), (e),  
24           (f), (g), and (i) of this section:  
25           (1)    A wholesale water supply contract filed pursuant to §24.15 of this title (relating to  
26                   Notice of Wholesale Water Supply Contract);  
27           (2)    A tariff filed by a water supply or sewer service corporation pursuant to §24.21(j)  
28                   of this title (relating to Form and Filing of Tariffs);  
29           (3)    Evidence of recording in the real property records of each county in which the  
30                   service area, or a portion of the service area is located, a copy of the map of a water  
31                   or sewer certificate of convenience and necessity and of any amendment to the  
32                   certificate as contained in the commission's records and a boundary description of  
33                   the area pursuant to §24.106(f) of this title (relating to Notice and Mapping  
34                   Requirements for Certificate of Convenience and Necessity Applications);  
35           (4)    Updated tariffs filed by water supply or sewer service corporations, other than those  
36                   filed with an application to obtain or amend a certificate of convenience and  
37                   necessity;  
38           (5)    Requests for registration to submeter or allocate utility service from owners of  
39                   dwelling units and multiple use facilities seeking to bill tenants for submetered or  
40                   allocated utility service or who change the method used to bill tenants for utility  
41                   service; and

(6) Reports filed by a temporary manager pursuant to §24.143(h) of this title (relating to Operation of a Utility by a Temporary Manager) on a monthly basis.

~~(c)(b)~~ **Requirements of form.**

(1) (No change.)

(2) Whenever possible, all documents should be provided on 8.5 by 11 inch paper. However, any log, graph, map, drawing, or chart submitted as part of a filing will be accepted on paper larger than provided in subsection ~~(h)(g)~~ of this section, if it cannot be provided legibly on letter-size paper. The document must be able to be folded to a size no larger than 8.5 by 11 inches. Documents that can not be folded may not be accepted.

~~(d)(e)~~ **Format.** Any filing with the commission must:

(1)-(3) (No change.)

~~(e)(d)~~ **Citation form.** Any filing with the commission should comply with the rules of citation, set forth, in the following order of preference, by the commission's "Citation and Style Guide," the most current edition of the "Texas Rules of Form," published by the University of Texas Law Review Association (for Texas authorities), and the most current edition of "A Uniform System of Citation," published by The Harvard Law Review Association' (for all other authorities). Neither Rule 1.1 of the Uniform System nor the comparable portion of the "Texas Rules of Form" shall be applicable in proceedings.

~~(f)(e)~~ **Signature.** Every pleading and document shall be signed by the party or the party's authorized representative, and shall include the party's address, telephone number, and, if available, facsimile machine number. In addition, every pleading and document shall include an electronic mail address, unless the party or the party's authorized representative has filed a statement under §22.106 of this title (relating to Statement of No Access). If the person signing the pleading or document is an attorney licensed in Texas, the attorney's state ~~State~~-bar number shall be provided.

~~(g)(f)~~ **Page limits.** In major rate proceedings, proceedings initiated pursuant to PURA Chapter 36, Subchapter D or Chapter 53, Subchapter D, fuel reconciliations, petitions to declare a market subject to significant competition, and applications for licensing of new generating plant, except for testimony and rate filing packages, no document shall exceed 100 pages in length, including attachments. In all other dockets, no document shall exceed 50 pages in length, including attachments. The page limitation shall not apply to courtesy copies of legal authorities cited in the pleading. A presiding officer may establish a larger or smaller page limit. In establishing larger or smaller page limits, the presiding officer shall consider such factors as which party has the burden of proof and the extent of opposition to a party's position that would need to be addressed in the document. The page limitations in this subsection do not apply to discovery responses.

1 ~~(h)(g)~~ **Hard copy filing standards.** Hard copies of each document shall be filed with the  
2 commission in accordance with the requirements set forth in paragraphs (1)-(7) of this  
3 subsection.

4 (1) Each document shall be typed or printed on paper measuring 8.5 by 11 inches.  
5 Oversized documents being filed on larger paper pursuant to subsection (c)(2)  
6 ~~(b)(2)~~ of this section shall be filed as separate referenced attachments. No single  
7 document shall consist of more than one paper size.

8 (2)-(3) (No change.)

9 (4) A cover letter may be attached to any document filed with the commission, and  
10 must be included with tariff-sheet filings. No cover letter shall be attached to any  
11 document, except tariff sheets.—The cover letter for tariff sheets shall state the  
12 control number, if available, the name of the party submitting the tariff sheets,  
13 sufficient detail to identify the tariff sheets, and shall be signed by the party or the  
14 party's representative.

15 (5) (No change.)

16 (6) If the document contains a barcode, the barcode shall be covered or redacted.

17 (7) If the document contains personally identifiable information such as social security  
18 numbers or bank account numbers, either the information must be covered or  
19 redacted, or the document shall be filed confidentially pursuant to §22.71(d) of this  
20 title (relating to Filing of Pleadings, Documents and Other materials).

21 ~~(i)(h)~~ **Electronic filing standards.** In addition to the hard copy filings required by subsection  
22 (h) of this section, any ~~Any~~ document may be filed, and all documents containing more  
23 than ten pages shall be filed, electronically in accordance with the requirements of  
24 paragraphs (1)-(3) ~~(8)~~ of this subsection. Electronic filings are registered by submission  
25 of the relevant electronic documents via ~~diskette or the internet~~, in accordance with  
26 transfer standards available in the commission's central records office or on the  
27 commission's World Wide Web site.; Alternatively, electronic filings may be registered  
28 by submission of a physical medium that is acceptable to the commission, is prepared in  
29 accordance with submission standards available in the commission's central records  
30 office or on the commission's World Wide Web site, and contains the relevant electronic  
31 documents. The commission will maintain a list of acceptable physical media on its  
32 website. and the submission of the required number of paper copies to the filing clerk  
33 under the provisions of this section and §22.71 of this title (relating to Filing of  
34 Pleadings, Documents and Other materials).

35 (1) (No change.)

36 (2) ~~Oversized documents shall not be filed in electronic media, but shall be filed as~~  
37 ~~referenced attachments.~~

38 (2)(3) Each document that has five or more headings and/or subheadings shall have a table  
39 of contents that lists the major sections of the document, the page numbers for each  
40 major section and the name of the electronic file that contains each major section  
41 of the document. Discovery responses are exempt from this paragraph.

(4) ~~Each document shall have a list of file names that are included in the filing and shall be referenced in an ASCII text file.~~

(5) ~~The table of contents and list of file names shall be placed at the beginning of the document.~~

(6) ~~Each diskette shall be labeled with the control number, if known, and the name of the person submitting the document.~~

(3)(7) Any information submitted under claim of confidentiality shall ~~should~~ not be submitted in electronic format.

(i) ~~**Disk format standards.** Each document that is submitted to the filing clerk on diskette shall be submitted as set forth in paragraphs (1) (3) of this subsection.~~

~~(1) 3.5 inch diskette.~~

~~(2) 1.44 M double sided, high density storage capacity.~~

~~(3) IBM format.~~

(j)(i) **File format standards.**

(1) (No change.)

(2) Electronic filings shall be made using the native file format used to create and edit the file, unless the native file format is not on the current list of preferred file formats maintained by the commission pursuant to paragraph (1) of this subsection. Microsoft Excel spreadsheets shall have active links and formulas that were used to create and manipulate the data in the spreadsheet. An application that fails to include the native-file filings is materially deficient.

(3)(2) Electronic filings that are submitted in a format other than that required by paragraph (1) of this subsection will not be accepted until after successful conversion of the file to a commission standard.

(k) **Electronic reports.** The commission may allow reports to be submitted on the commission's website.

(1) If a report is submitted on the commission's website pursuant to this subsection, it is exempt from §22.71(b) of this title and therefore does not have to be filed with the commission's filing clerk.

(2) The commission will maintain a list of reports that may be submitted on the commission's website pursuant to this subsection. This list will be available on the commission's website.

(l) **Map filing standards.**

(1) If a hard copy of a map is filed, it shall be filed in its original size. It shall not be reduced or enlarged.

(2) If digital mapping data is filed, it shall be filed using an industry standard file format acceptable to the commission containing feature class subcomponents of a geodatabase and capable of being manipulated by commission mapping staff. The commission will maintain a list of acceptable formats on its website.

- 1       (3) Digital mapping data shall be filed electronically pursuant to subsection (i) of this  
2       section and submitted on a physical medium capable of holding digital data and  
3       acceptable to the commission. The commission will maintain a list of acceptable  
4       media on its website. The physical medium described in this paragraph shall contain  
5       digital mapping data that conforms with the requirements of paragraph (2) of this  
6       subsection and graphic versions of any hard copy maps filed pursuant to paragraph  
7       (1) of this subsection.  
8       (4) Copies of physical maps and physical media containing digital mapping data shall  
9       be filed in conformance with §22.71(c) of this title.  
10

1   **§22.73. General Requirements for Applications.**

2       In addition to the requirements of form specified in §22.72 of this title (relating to Formal  
3   Requisites of Pleadings and Documents to be Filed with the Commission), all applications shall  
4   contain the following, unless otherwise required by statute or commission rule:

5       (1)-(5) (No change.)

6       (6)     any other matter required by statute or rule; ~~and~~

7       (7)     a certificate of service; and

8       (8)     the name of a person upon whom service may be had and, unless such person has  
9       filed a statement under §22.106 of this title (relating to Statement of No Access),  
10      an electronic mail address at which he or she can be served.  
11



1     **§22.74.           Service of Pleadings and Documents.**

2     (a)-(b) (No change.)

3     (c)     **Alternative methods of service.** On motion of a party or the presiding officer's own  
4             motion, the presiding officer may require service by electronic mail or service by notice of  
5             filing. On joint or separate motion of all parties to a proceeding, the presiding officer shall  
6             require service by electronic mail or service by notice of filing.

7             (1)     If a person has filed a statement of no access under §22.106 of this title (relating  
8             to Statement of No Access), the presiding officer shall require service on such  
9             persons by a method specified in subsection (b) of this section.

10            (2)     A party or representative of a party that has filed a statement of no access but that  
11            is required by §22.106(b) of this title to subsequently provide an electronic mail  
12            address will thereafter be subject to service by an alternative method if the  
13            presiding officer has required service by an alternative method.

14            (3)     Upon motion and for good cause shown, the presiding officer may require service  
15            by a method specified in subsection (b) of this section for any party in a  
16            proceeding.

17            (4)     Service by electronic mail shall be complete upon sending an electronic mail  
18            message with the pleading or document attached to the message to the electronic  
19            mail address provided by the party being served.

20            (5)     Service by notice of filing shall be complete upon sending an electronic mail  
21            message that contains a link to the electronic copy of the pleading or document  
22            that is accessible through the interchange on the commission's web site to the  
23            electronic mail address provided by the party being served.

24     ~~(d)~~(e) **Evidence of service.** A return receipt or affidavit of any person having personal  
25             knowledge of the facts shall be prima facie evidence of the facts shown thereon relating to  
26             service. A party may present other evidence to demonstrate facts relating to service.

27     ~~(e)~~(d) **Certificate of service.** Every document required to be served on all parties pursuant to  
28             subsection (a) of this section shall contain the following or similar certificate of service:  
29             "I, (name) (title) certify that a copy of this document was served on all parties of record in  
30             this proceeding on (date) in the following manner: (specify method). Signed, (signature)."  
31             The list of the names and addresses of the parties on whom the document was served,  
32             should not be appended to the document.

1    **§22.75.           Examination and Correction of Pleadings and Documents.**

2    (a)-(b) (No change.)

3    (c)    **Notice of material deficiencies in rate change applications.** This subsection applies to  
4           applications for rate changes filed pursuant to PURA, Chapter 36, Subchapter C or  
5           Chapter 53, Subchapter C and TWC application filings.

6           (1)-(3) (No change.)

7    (d)    **Notice of material deficiencies in applications for certificates of convenience and**  
8           **necessity for electric transmission lines.**

9           (1)    Motions to find an application for certificate of convenience and necessity for  
10               electric transmission line materially deficient shall be filed no later than 21 days  
11               after an application is filed. Such motions shall specify the nature of the deficiency  
12               and the relevant portions of the application, and cite the particular requirement with  
13               which the application is alleged not to comply. The applicant's response to a motion  
14               to find an application for certificate of convenience and necessity for electric  
15               transmission line materially deficient shall be filed no later than five working days  
16               after such motion is received.

17          (2)    If, within 35 days after filing of an application for certificate of convenience and  
18               necessity for electric transmission line, the presiding officer has not issued a written  
19               order concluding that material deficiencies exist in the application, the application  
20               shall be deemed sufficient.

21          (3)    (No change.)

22          (4)    For an application for certificate of convenience and necessity filed pursuant to  
23               ~~PURA Public Utility Regulatory Act~~ §39.203(e), a pleading alleging a material  
24               deficiency in the application shall be filed no later than 14 days after the application  
25               is filed, and shall be served on the applicant by hand delivery, facsimile  
26               transmission, or overnight courier delivery and on the other parties pursuant to  
27               §22.74(b) of this title (relating to Service of Pleadings and Documents). The  
28               applicant shall reply to a pleading alleging a material deficiency no later than seven  
29               days after it is received. If the presiding officer determines that a material  
30               deficiency exists in an application, the presiding officer shall issue a written order  
31               within 28 days of the filing of the application ordering the applicant to amend its  
32               application and correct the deficiency within seven days. This order shall be served  
33               on the applicant by hand delivery, facsimile transmission, or overnight courier  
34               delivery and on the other parties pursuant to §22.74(b) of this title. If the applicant  
35               does not timely amend its application and correct the deficiency, the presiding  
36               officer shall dismiss the application without prejudice.

37   (e)    (No change.)

1    **§22.76.           Amended Pleadings.**

2    (a)    **Filing amended pleadings.**

3           (1)   Any pleading may be amended at any time before notice of the docket as required  
4                by §22.51 of this title (relating to Notice for Public Utility Regulatory Act, Chapter  
5                36, Subchapters C-E; Chapter 51, §51.009; and Chapter 53, Subchapter C-E,  
6                Proceedings) and §22.52 of this title (relating to Notice in Licensing Proceedings)  
7                is given.

8           (2)-(4) (No change.)

9    (b)    (No change.)

1    **§22.78.           Responsive Pleadings and Emergency Action.**

2    (a)    (No change.)

3    (b)    **Responses to complaints.** Unless otherwise specified by statute, by this chapter, or by  
4           order of the presiding officer, responsive pleadings to complaints filed to initiate a  
5           proceeding shall be filed within 21 days of the receipt of the complaint. This subsection  
6           does not apply to complaints filed pursuant to PURA, Chapter 36, Subchapter D or Chapter  
7           53, Subchapter D, or for a complaint filed pursuant to TWC §13.004 (relating to  
8           Jurisdiction of Utility Commission Over Certain Water Supply or Sewer Service  
9           Corporations).

10   (c)-(d) (No change.)

11   (e)    **Water or Sewer Complaints pursuant to TWC §13.004.** In a complaint proceeding filed  
12           pursuant to TWC § 13.004, the presiding officer shall determine the scope of the response  
13           that the complainant shall file and shall also set an appropriate deadline for the water supply  
14           or sewer service corporation's response.

1    **§22.101.       Representative Appearances.**

2    (a)     (No change.)

3    (b)     **Change in authorized representative.** Any person appearing through an authorized  
4           representative shall provide written notification to the commission and all parties to the  
5           proceeding of any change in that person's authorized representative. The required  
6           number of copies of the notification shall be filed in Central Records under the control  
7           number(s) for each affected proceeding and shall include the authorized representative's  
8           name, address, telephone number, ~~and~~ facsimile number, and, unless the authorized  
9           representative has filed a statement under §22.106 of this title (relating to Statement of  
10          No Access), an electronic mail address.

11   (c)-(d) (No change.)

1    **§22.103.       Standing to Intervene.**

2    (a)-(b) (No change.)

3    (c)    **Dispute resolution pursuant to the Federal Telecommunications Act of 1996**  
4           (FTA96). Standing to intervene in proceedings concerning dispute resolution and  
5           approval of agreements pursuant to the commission's authority under FTA96 is subject to  
6           the requirements of Subchapter D of Chapter 21 of this title ~~Subchapter P of this chapter~~  
7           (relating to Dispute Resolution).

8    (d)    By requesting to intervene in a proceeding, a person agrees to accept delivery by  
9           electronic mail from the Commission of any motions for rehearing and replies to motions  
10          for rehearing, unless he or she has filed a statement under §22.106 of this title (relating to  
11          Statement of No Access).

1    **§22.104. Motions to Intervene.**

2    (a)-(c) (No change.)

3    (d)    **Late intervention.**

4       (1)-(4) (No change.)

5       (5)    Late intervention after Proposal for Decision (PFD) or Proposed Order (PO) issued.  
6           For late interventions, other than those pursuant to paragraph (4) of this subsection,  
7           the procedures in subparagraphs (A) - (B) of this paragraph apply:

8           (A)    Agenda ballot. Upon receipt of a motion to intervene after the PFD or PO  
9           has been issued, the Commission Advising and Docket Management Policy  
10          ~~Development~~ Division shall send separate ballots to each commissioner to  
11          determine whether the motion to intervene will be considered at an open  
12          meeting. The Commission Advising and Docket Management Policy  
13          ~~Development~~ Division shall notify the parties by letter whether a  
14          commissioner by individual ballot has added the motion to intervene to an  
15          open meeting agenda, but will not identify the requesting commissioner(s).

16          (B)    (No change.)

1        **§22.106. Statement of No Access.**

2        **(a) Statement of no access.** If a person or representative of a person has no access to the  
3        internet or to electronic mail, his or her motion to intervene shall include a signed statement  
4        that:

5                (1) he or she has no access to the internet or to electronic mail; and

6                (2) if circumstances change such that the person or representative gains access to the  
7        internet or to electronic mail, he or she agrees to:

8                (A) promptly notify the commission in writing;

9                (B) provide the commission with his or her electronic mail address; and

10               (C) become subject to the commission rules governing service by electronic  
11               mail for those who have not provided a statement of no access.

12        **(b) Subsequent access.** If a person who has provided the commission with a statement of no  
13        access pursuant to subsection (a) of this section subsequently obtains access to the internet  
14        or to electronic mail, he or she must provide an electronic mail address to the commission  
15        and will become subject to the commission rules governing service by electronic mail for  
16        those who have not provided a statement of no access.  
17



1    **§22.125.       Interim Relief.**

2    (a)-(c) (No change.)

3    (d)    **Standard and burden of proof.** ~~In Pursuant to PURA §36.006 or §53.006, in any~~  
4           proceeding involving a proposed interim change in rates, the burden of proof to show that  
5           the change proposed by the utility or existing rate is just and reasonable shall be on the  
6           utility.

7    (e)    (No change.)

1   **§22.126.       Bonded Rates.**

2           During the pendency of its rate proceeding, a utility seeking to implement rates under bond  
3   pursuant to PURA §36.110 or §53.110 or pursuant to TWC §13.187 or §13.1871 shall file the  
4   required number of copies of its application for approval of bond at least two weeks prior to the  
5   date the bonded rates are to be effective. The application shall conform to the requirements of  
6   Subchapter E, of this chapter (relating to Pleadings). The bond shall be in an amount equal to or  
7   greater than one-sixth of the annual difference between the utility's current rates and the bonded  
8   rates. The bond must be approved by the Commission Advising and Docket Management Policy  
9   ~~Development~~ Division as to sufficiency based on the commission staff's review of the utility's  
10   application. Any decision by the Commission Advising and Docket Management Policy  
11   ~~Development~~ Division either approving or disapproving a bond is appealable to the commission  
12   pursuant to §22.123 of this title (relating to Appeal of an Interim Order and Motions for  
13   Reconsideration of Interim Order Issued by the Commission).

1    **§22.127.       Certification of an Issue to the Commission.**

2    (a)-(b) (No change.)

3    (c)    **Procedure for certification.** The presiding officer shall submit the certified issue to the  
4           Commission Advising and Docket Management ~~Policy Development~~ Division. The  
5           Commission Advising and Docket Management ~~Policy Development~~ Division shall place  
6           the certified issue on the commission's agenda to be considered at the earliest time  
7           practicable that is not earlier than 20 days after its submission. Parties may file briefs on  
8           the certified issue within 13 days of its submission. The presiding officer may abate the  
9           proceeding while a certified issue is pending.

10   (d)    (No change.)

1    **§22.141.       Forms and Scope of Discovery.**

2    (a)   **Scope.** Parties may obtain discovery regarding any matter, not privileged or exempted  
3           under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law  
4           or rule, that is relevant to the subject matter in the proceeding. Discoverable matters  
5           include the existence, description, nature, custody, condition, location and contents of any  
6           documents, including papers, books, accounts, drawings, graphs, charts, photographs,  
7           maps, electronic mail, audio electronic or video videotape recordings, and any other data  
8           compilations from which information can be obtained and translated, if necessary, by the  
9           person from whom information is sought, into reasonably usable form, and any other  
10          tangible things which constitute or contain matters relevant to the subject matter in the  
11          action, and the identity and location of persons having any knowledge of any discoverable  
12          matter. Discovery is not limited to tangible things, but may extend to knowledge, mental  
13          impressions, and opinions of persons who will testify; explanations of documents or  
14          tangible things, or information contained therein; and other relevant information within the  
15          knowledge or control of the entity from whom discovery is sought. A person is not required  
16          to produce a document or tangible thing unless it is within that person's constructive or  
17          actual possession, custody, or control. A person has possession, custody or control of a  
18          document or tangible thing as long as the person has a superior right to compel the  
19          production from a third party and can obtain possession of the document or tangible thing  
20          with reasonable effort.

21   (b)-(c) (No change.)

1    **§22.183. Disposition by Default.**

2    (a)    **Default.** A default occurs when a party who does not have the burden of proof fails to  
3           appear for hearing or request a hearing within 30 days after service of notice of an  
4           opportunity for a hearing.

5    (b)-(e) (No change.)

1    **§22.225.       Written Testimony and Accompanying Exhibits.**

2    (a)   **Prefiling of testimony, exhibits, and objections.**

3       (1)-(5) (No change.)

4       (6)   The testimony pre-filing schedule in a major rate proceeding ~~Public Utility~~  
5       ~~Regulatory Act, Chapter 36, Subchapter C or E, or Chapter 53, Subchapter C or E~~  
6       ~~rate proceeding~~ shall be established as set out in this subsection.

7       (A)-(C)       (No change.)

8       (7)   For electric and telecommunication rate proceedings, ~~the~~ The presiding officer shall  
9       establish a pre-filing schedule for PURA ~~Public Utility Regulatory Act, Chapter 36,~~  
10      ~~Subchapter D or Chapter 53, Subchapter D~~ rate cases and for cases other than major  
11      rate proceedings. In proceedings that are not major rate proceedings, notice of  
12      intent proceedings, applications for certificates of convenience and necessity for  
13      new generating plant, or applications for fuel reconciliations, the applicant is not  
14      required to prefile written testimony and exhibits at the time the filing is made  
15      unless otherwise required by statute or rule.

16      (8)   For all water and sewer matters filed pursuant to TWC Chapters 12 or 13, except  
17      for a major rate proceeding, the presiding officer shall establish a pre-filing  
18      schedule. The applicant is not required to prefile written testimony and exhibits at  
19      the time the filing is made unless otherwise required by statute or rule.

20      (9)(8) Utilities filing an application for construction of a transmission facility that has  
21      been designated by the Electric Reliability Council of Texas (ERCOT) independent  
22      system operator as critical to the reliability of the ERCOT system and to be  
23      considered on an expedited basis, shall file written testimony and exhibits  
24      supporting its direct case on the same date that the application is filed with the  
25      commission. This requirement shall also apply to transmission lines located in  
26      other reliability councils or administered by other independent system operators  
27      provided such councils have a process for designation of critical transmission lines.

28      (10)(9) The times for pre-filing set out in this section may be modified upon a showing of  
29      good cause.

30      (11)(10) Late-filed testimony may be admitted into evidence if the testimony is  
31      necessary for a full disclosure of the facts and admission of the testimony into  
32      evidence would not be unduly prejudicial to the legal rights of any party. A party  
33      that intends to offer late-filed testimony into evidence shall, at the earliest  
34      opportunity, inform the presiding officer, who shall establish reasonable procedures  
35      and deadlines regarding such testimony.

36   (b)-(e) (No change.)

1    **§22.226.       Exhibits.**

2    (a)    **Form.** Exhibits, other than maps, to be offered in evidence at a hearing shall be of a size  
3            which will not unduly encumber the record. Whenever practicable, exhibits shall  
4            conform to the size requirements established by §22.72 of this title (relating to Formal  
5            Requisites of Pleadings and Documents to be Filed with the Commission). The pages of  
6            each exhibit shall be consecutively numbered.

7    (b)-(d) (No change.)

1    **§22.242.       Complaints.**

2    (a)   **Records of complaints.** Any affected person may complain to the commission, either in  
3       writing or by telephone, setting forth any act or thing done or omitted to be done by any  
4       entity regulated by the commission ~~electric utility or telecommunications utility~~ in  
5       violation or claimed violation of any law which the commission has jurisdiction to  
6       administer or of any order, ordinance, rule, or regulation of the commission. The  
7       commission staff may request a complaint made by telephone be put in writing if  
8       necessary to complete investigation of the complaint. The commission shall keep  
9       information about each complaint filed with the commission. The commission shall  
10      retain the information pursuant to the agency's records retention schedule as approved by  
11      the Texas State Library and Archives Commission. The information shall include:  
12      (1)-(6) (No change.);

13   (b)   (No change.)

14   (c)   **Informal resolution required in certain cases.** A person who is aggrieved by the  
15      conduct of an entity regulated by the commission ~~electric utility or telecommunications~~  
16      ~~utility~~ or other person must present a complaint to the commission for informal resolution  
17      before presenting the complaint to the commission.

18      (1)   **Exceptions.** A complainant may present a formal complaint to the commission,  
19      without first referring the complaint for informal resolution, if:

20          (A)-(B)       (No change.)

21          (C)       the complaint is filed by a person alleging that an electric utility or a  
22                      telecommunications utility has engaged in anti-competitive practices; ~~or~~

23          (D)       the complaint has been the subject of a complaint proceeding conducted by  
24                      a city;

25          (E)       the complaint is filed by a person alleging that a water or sewer utility has  
26                      abandoned the services of the utility; or

27          (F)       the complaint is filed by a person alleging that a wholesale water or sewer  
28                      provider has discontinued, reduced, or impaired its wholesale water or  
29                      sewer service to its customers for reasons other than those specified in  
30                      §24.88 of this title (relating to Discontinuance of Service).

31      (2)   (No change.)

32   (d)   (No change.)

33   (e)   **Formal Complaint.** If an attempt at informal resolution fails, or is not required under  
34      subsection (c) of this section, the complainant may present a formal complaint to the  
35      commission.

36      (1)   **Requirement to present complaint concerning electric, water, or sewer utility**  
37              **to a city.** If a person receives electric, water, or sewer utility service or has applied  
38              to receive electric, water, or sewer utility service within the limits of a city that has



original jurisdiction over the electric, water, or sewer utility providing service or requested to provide service, the person must present any complaint concerning the electric, water, or sewer utility to the city before presenting the complaint to the commission.

(A)-(B) (No change.)

- (2) The commission staff may permit a complainant to cure any deficiencies under this subsection and may waive any of the requirements of this subsection for good cause, if the waiver will not materially affect the rights of any other party. A formal complaint shall include the following information:

(A)-(B) (No change.)

(C) the address, telephone number, and facsimile transmission number, if available, and, unless the person has filed a statement under §22.106 of this title (relating to Statement of No Access), the electronic mail address of the complainant or the complainant's representative;

(D) the name of the entity regulated by the commission ~~electric utility or telecommunications utility~~ or other person against whom the complainant is seeking relief;

(E) if the complainant is seeking relief against an electric, water, or sewer utility, a statement of whether the complaint relates to service that the complainant is receiving within the limits of a city;

(F) if the complainant is seeking relief against an electric, water, or sewer utility within the limits of a city, a description of any complaint proceedings conducted by the city, including the outcome of those proceedings;

(G)-(I) (No change.)

(f)-(g) (No change.)

- (h) **Continuation of service during processing of complaint.** In any case in which a formal complaint has been filed and an allegation is made that an entity regulated by the commission ~~electric utility or a telecommunications utility~~ or other person is threatening to discontinue a customer's service, the presiding officer may, after notice and opportunity for hearing, issue an order requiring the entity regulated by the commission ~~electric utility or telecommunications utility~~ or other person to continue to provide service during the processing of the complaint. The presiding officer may issue such an order for good cause, on such terms as may be reasonable to preserve the rights of the parties during the processing of the complaint.

- (i) **List of cities without regulatory authority.** The commission shall maintain and make available to the public a list of the municipalities that do not have exclusive original jurisdiction over all electric rates, operations, and services provided by an electric utility within its city or town limits and a list of the municipalities that have surrendered to the

- 1 commission original jurisdiction over the rates charged by a utility for retail water or
- 2 sewer service within the corporate boundaries of the municipality.

**§22.243. Electric or Telecommunication Rate Change Proceedings.**

- (a) **Statements of intent.** No electric utility or public utility, other than an electric cooperative that has elected to be exempt from rate regulation under PURA ~~the Public Utility Regulatory Act~~, Chapter 36, may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the electric utility or public utility, the effective date of the proposed rate change, the classes and numbers of utility ratepayers affected, and a description of the service for which a change is requested. For major rate proceedings, the expected change in revenues must be expressed as an annual dollar increase over adjusted test year revenues and as a percent increase over adjusted test year revenues.
- (b) **Rate filing package.** Any electric utility or public utility filing a statement of intent to change its rates in a major rate proceeding under PURA ~~the Public Utility Regulatory Act (PURA)~~, Chapter 36, Subchapter C or Chapter 53, Subchapter C shall file a rate filing package and supporting workpapers as required by the commission's current rate filing package at the same time it files a statement of intent. The rate filing package shall be securely bound under cover, and shall include all information required by the commission's rate filing package form in the format specified. Examination for sufficiency and correction of deficiencies in rate filing packages ~~is~~ are governed by §22.75 of this title (relating to Examination and Correction of Pleadings and Documents).
- (c) (No change.)

1    **§22.244.       Review of Municipal Electric Rate Actions.**

2    (a)    **Contents of petitions.** In addition to any information required by statute, petitions for  
3           review of municipal rate actions filed pursuant to PURA ~~the Public Utility Regulatory~~  
4           ~~Act (PURA)~~ §33.052 or §§33.101 – 33.104 shall contain the original petition for review  
5           with the required signatures and following additional information.  
6           (1)-(2) (No change.)

7    (b)-(c) (No change.)

8    (d)    **Verification of petition.** Unless otherwise provided by order of the presiding officer, the  
9           following procedures shall be followed to verify petitions appealing municipal rate  
10          actions filed pursuant to PURA §33.052 and §§33.101 – 33.104.

11          (1)    Within 15 days of the filing of an appeal of a municipal rate action, the Commission  
12               Advising and Docket Management ~~Policy Development~~ Division shall send a copy  
13               of the petition to the respondent municipality with a directive that the municipality  
14               verify the signatures on the petition.

15          (2)    Within 30 days after receipt of the petition from the Commission Advising and  
16               Docket Management ~~Policy Development~~ Division, the municipality shall file with  
17               the commission a statement of review, together with a supporting written affidavit  
18               sworn to by a municipal official.

19          (3)-(5) (No change.)

20   (e)    (No change).

1   **§22.246. Administrative Penalties.**

2   (a)    (No change.)

3   (b)    Definitions. The following words and terms, when used in this section, shall have the  
4       following meanings unless the context clearly indicates otherwise:

5       (1)-(4) (No change.)

6       (5)   **Violation** -- Any activity or conduct prohibited by PURA, the TWC, the Public  
7       Utility Regulatory Act (PURA), commission rule, or commission order.

8       (6)    (No change.)

9   (c)    **Amount of administrative penalty for violations of PURA or a rule or order adopted**  
10       **under PURA.**

11       (1)-(3) (No change.)

12   (d)    **Amount of administrative penalty for violations of the TWC or a rule or order**  
13       **adopted under Chapter 13 of the TWC.**

14       (1)    Each day a violation continues may be considered a separate violation for which an  
15       administrative penalty can be levied, regardless of the status of any administrative  
16       procedures that are initiated under this subsection.

17       (2)    The administrative penalty for each separate violation may be in an amount not to  
18       exceed \$5,000 per day.

19       (3)    The amount of the penalty shall be based on:

20           (A)   the nature, circumstances, extent, duration, and gravity of the prohibited  
21           acts or omissions;

22           (B)   the degree of culpability, including whether the violation was attributable  
23           to mechanical or electrical failures and whether the violation could have  
24           been reasonably anticipated and avoided;

25           (C)   the demonstrated good faith, including actions taken by the person,  
26           affiliated interest, or entity to correct the cause of the violation;

27           (D)   any economic benefit gained through the violations;

28           (E)   the amount necessary to deter future violations; and

29           (F)   any other matters that justice requires.

30   ~~(e)(d)~~ **Initiation of investigation.** Upon receiving an allegation of a violation or of a continuing  
31       violation, the executive director shall determine whether an investigation should be  
32       initiated.

33   ~~(f)(e)~~ **Report of violation or continuing violation.** If, based on the investigation undertaken  
34       pursuant to subsection ~~(e)(d)~~ of this section, the executive director determines that a  
35       violation or a continuing violation has occurred, the executive director may issue a report  
36       to the commission.

37       (1)    (No change.)

38       (2)    **Notice of report.**

- 1 (A) Within 14 days after the report is issued, the executive director shall, by  
2 certified mail, return receipt requested, give written notice of the report to  
3 the person who is alleged to have committed the violation or continuing  
4 violation which is the subject of the report.
- 5 (B) For violations of the TWC or a rule or order adopted under Chapter 13 of  
6 the TWC, within 10 days after the report is issued, the executive director  
7 shall, by certified mail, return receipt requested, give written notice of the  
8 report to the person who is alleged to have committed the violation or  
9 continuing violation which is the subject of the report.
- 10 (C) The notice must include:
- 11 (i)(A) a brief summary of the alleged violation or continuing violation;  
12 (ii)(B) a statement of the amount of the recommended administrative  
13 penalty;  
14 (iii)(C) a statement recommending disgorgement of excess revenue, if  
15 applicable, pursuant to §25.503 of this title;  
16 (iv)(D) a statement that the person who is alleged to have committed the  
17 violation or continuing violation has a right to a hearing on the  
18 occurrence of the violation or continuing violation, the amount of  
19 the administrative penalty, or both the occurrence of the violation or  
20 continuing violation and the amount of the administrative penalty;  
21 (v)(E) a copy of the report issued to the commission pursuant to this  
22 subsection; and  
23 (vi)(F) a copy of this section, §22.246 of this title (relating to  
24 Administrative Penalties).

25 ~~(g)(f)~~ **Options for response to notice of violation or continuing violation.**

26 (1) **Opportunity to remedy.**

- 27 (A) This paragraph does not apply to a violation of PURA Chapters 17, 55, or  
28 64, or Chapter 13 of the TWC, or of a commission rule or commission order  
29 pursuant to those chapters.
- 30 (B) Within 40 days of the date of receipt of a notice of violation set out in  
31 subsection ~~(f)(2)(e)(2)~~ of this section, the person against whom the  
32 administrative penalty or disgorgement may be assessed may file with the  
33 commission proof that the alleged violation has been remedied and that the  
34 alleged violation was accidental or inadvertent. A person who claims to  
35 have remedied an alleged violation has the burden of proving to the  
36 commission both that an alleged violation was remedied before the 31st day  
37 after the date the person received the report of violation and that the alleged  
38 violation was accidental or inadvertent. Proof that an alleged violation has  
39 been remedied and that the alleged violation was accidental or inadvertent  
40 shall be evidenced in writing, under oath, and supported by necessary  
41 documentation.
- 42 (C)-(D) (No change.)

(E) If the executive director determines that the alleged violation is a continuing violation, the executive director shall institute further proceedings, including referral of the matter for hearing pursuant to subsection ~~(i)(4)~~ of this section.

(2) **Payment of administrative penalty and/or disgorged excess revenue.** Within ~~20~~ 30-days after the date the person receives the notice set out in subsection ~~(f)(2)(e)(2)~~ of this section, the person may accept the determination and recommended administrative penalty and, if applicable, the recommended excess revenue to be disgorged through a written statement sent to the executive director. If this option is selected, the person shall take all corrective action required by the commission. The commission by written order shall approve the determination and impose the recommended administrative penalty and, if applicable, recommended disgorged excess revenue.

(3) **Request for hearing.** Not later than the 20th day after the date the person receives the notice set out in subsection ~~(f)(2)(e)(2)~~ of this section, the person may submit to the executive director a written request for a hearing on any or all of the following:

(A)-(C) (No change.)

~~(h)(g)~~ **Settlement conference.** A settlement conference may be requested by any party to discuss the occurrence of the violation or continuing violation, the amount of the administrative penalty, disgorged excess revenue, if applicable, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.  
(1)-(2) (No change.)

~~(i)(h)~~ **Hearing.** If a person requests a hearing under subsection ~~(g)(3)(f)(3)~~ of this section, or fails to respond timely to the notice of the report of violation or continuing violation provided pursuant to subsection ~~(f)(2)(e)(2)~~ of this section, or if the executive director determines that further proceedings are necessary, the executive director shall set a hearing, provide notice of the hearing to the person, and refer the case to SOAH pursuant to §22.207 of this title (relating to Referral to State Office of Administrative Hearings). For violations of the TWC or a rule or order adopted under Chapter 13 of the TWC, if the person charged with the violation fails to timely respond to the notice, the commission by order shall assess the recommended penalty or order a hearing to be held on the findings and recommendations in the report. If the commission orders a hearing or the executive director sets a hearing, the The case shall then proceed as set forth in paragraphs (1)-(5) of this subsection.

(1)-(2) (No change.)

(3) The SOAH administrative law judge shall promptly issue to the commission a proposal for decision, including findings of fact and conclusions of law, about:

(A) (No change.)

- 1 (B) whether the alleged violation was cured and was accidental or inadvertent  
2 for a violation of any chapter other than PURA Chapters 17, 55, or 64; ~~or~~  
3 of a commission rule or commission order pursuant to those chapters; or of  
4 Chapter 13 of the TWC; and  
5 (C) (No change.)  
6 (4) Based on the SOAH administrative law judge's proposal for decision, the  
7 commission may:  
8 (A) (No change.)  
9 (B) if applicable, determine that a violation occurred but that, pursuant to  
10 subsection (g)(1) ~~(f)(1)~~ of this section, the person remedied the violation  
11 within 30 days and proved that the violation was accidental or inadvertent,  
12 and that no administrative penalty will be imposed; or  
13 (C) (No change.)  
14 (5) (No change.)

15 ~~(j)(i)~~ **Parties to a proceeding.** The parties to a proceeding under Subchapter A of Chapter 15  
16 of PURA relating to administrative penalties or disgorgement of excess revenue shall be  
17 limited to the person who is alleged to have committed the violation or continuing violation  
18 and the commission, including the independent market monitor. This does not apply to a  
19 subsequent proceeding under subsection (k)(j) of this section.

20 ~~(k)(j)~~ **Distribution of Disgorged Excess Revenues.** Disgorged excess revenues shall be  
21 remitted to an independent organization, as defined in PURA §39.151. The independent  
22 organization shall distribute the excess revenue to affected wholesale electric market  
23 participants in proportion to their load during the intervals when the violation occurred to  
24 be used to reduce costs or fees incurred by retail electric customers. The load of any market  
25 participants that are no longer active at the time of the distribution shall be removed prior  
26 to calculating the load proportions of the affected wholesale electric market participants  
27 that are still active. However, if the commission determines other wholesale electric  
28 market participants are affected or a different distribution method is appropriate, the  
29 commission may direct commission staff to open a subsequent proceeding to address those  
30 issues.

31 (1)-(3) (No change.)  
32



1    **§22.263.       Final Orders.**

2    (a)-(c) (No change.)

3    (d)    **Date That an Order is Signed.** If a sworn motion filed under APA §2001.142(c) is  
4           granted, with or without commission action, then, regardless of the date shown on the  
5           order, the date that the commission's order is considered to be signed shall be the date  
6           specified in that sworn motion as the date that the movant received the order or obtained  
7           actual knowledge of the order. If more than one sworn motion is granted, then the date  
8           that the commission's order is considered to be signed is the latest date specified in any  
9           such motions.

10   ~~(e)(d)~~   **Reciprocity of Final Orders Between States.** After reviewing the facts and the issues  
11           presented, a final order may be adopted by the commission even though it is inconsistent  
12           with the commission's procedural or substantive rules provided that the final order, or the  
13           portion thereof that is inconsistent with commission rules, is a final order, or a part thereof,  
14           rendered by a regulatory agency of some state other than the State of Texas and provided  
15           further that the number of customers in Texas affected by the final order is no more than  
16           the lesser of either 1,000 customers or 10% of the total number of customers of the affected  
17           utility.

1    **§22.264.       Rehearing.**

2    (a)    Motions for rehearing, replies thereto, and commission action on motions for rehearing  
3           shall be governed by APA. In addition to an applicant, a respondent, or commission  
4           staff, only ~~Only~~ a party who has been granted intervenor status may file a motion for  
5           rehearing.

6    (b)    (No change.)

7    (c)    A motion for rehearing or a reply to a motion for rehearing is untimely if it is not filed by  
8           the deadlines specified in APA §2001.146 or, if the commission extends the time to file  
9           such motion or reply, the date specified in the order of the commission extending time.

10   (d)   A motion by a party to extend time related to a motion for rehearing must be filed no less  
11          than ten days before the original deadline or it is untimely. Such motion must state with  
12          specificity the reasons the extension is justified.

13   ~~(e)~~ (e)   Upon the filing of a timely motion for rehearing or a timely motion to extend time, the  
14          Commission Advising and Docket Management Policy Development ~~Policy Development~~ Division shall send  
15          separate ballots to each commissioner to determine whether they will consider the motion  
16          at an open meeting. Untimely motions shall not be balloted. An affirmative vote by one  
17          commissioner is required for consideration of a the-motion for rehearing or a motion to  
18          extend time at an open meeting. If no commissioner votes to add a timely motion to  
19          extend time to an open meeting for consideration, the motion is overruled ten days after  
20          the motion is filed.

21   (f)    If the commission extends time to act on a motion for rehearing, the Commission  
22          Advising and Docket Management Division shall send separate ballots to each  
23          commissioner to determine whether they will consider the motion for rehearing at a  
24          subsequent open meeting, and an affirmative vote by one commissioner is required to  
25          place the motion for rehearing on an open meeting agenda.